

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DAN L RUMLER**  
Claimant

**APPEAL NO. 14A-UI-10274-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AIRGAS USA LLC**  
Employer

**OC: 04/13/14**  
**Claimant: Appellant (4)**

Iowa Code Section 96.5(5) – Severance Pay

**STATEMENT OF THE CASE:**

Dan Rumler filed a timely appeal from the September 30, 2014, reference 03, decision that denied benefits for the five weeks ending May 31, 2014; based on an Agency conclusion that he had received severance pay that was deductible from his unemployment insurance benefits. After due notice was issued, a hearing was held on October 23, 2014. Mr. Rumler participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Numbers 14A-UI-10273-JTT and 14A-UI-10275-JTT. Exhibit A and Department Exhibits D-1, D-2, and D-3 were received into evidence.

**ISSUE:**

Whether the claimant received severance pay that is deductible from his unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Dan Rumler was employed by Airgas USA, L.L.C. as a full-time safety specialist and last performed work for that employer on Friday, April 4, 2014. At the time Mr. Rumler involuntarily separated from the employment, the employer paid Mr. Rumler five weeks wages, \$5,140.63 in “severance pay,” and two weeks wages of \$2,056.26 in “pay in lieu of notice.” To obtain the severance pay, Mr. Rumler had to execute a non-compete agreement with the employer and waive legal rights to file suit against the employer in connection with his separation from the employment. The two weeks of “pay in lieu of notice” represented the two weeks of Paid Time Off that Mr. Rumler had accrued, but not yet used at the time of his separation.

Mr. Rumler established a claim for benefits that was effective April 13, 2014. For the week ending April 19, 2014 Mr. Rumler reported zero wages and received \$408.00 in benefits. For the week ending April 26, 2014 Mr. Rumler reported “vacation” pay of \$999.00 or more and received no benefits. For the week ending May 3, 2014 Mr. Rumler reported zero wages and received \$408.00 in benefits. For the week ending May 10, 2014 Mr. Rumler reported “vacation” pay of \$999.00 or more and received no benefits. For the week ending May 17, 2014 Mr. Rumler reported \$850.00 in wages and received no benefits.

On April 15, 2014 Iowa Workforce Development mailed a notice of claim to the employer at the employer's address of record. The notice of claim provided April 25, 2014 as the deadline for the employer's response to the notice of claim. Workforce Development received the employer's faxed response on April 24, 2014. In the area of the notice of claim reserved for information concerning final wages, vacation pay, severance pay et cetera, the employer superimposed a box containing information regarding payments made to the claimant. The employer indicated it had paid \$1,028.13 to the claimant on April 25, 2014 for the "period ending 4/19/14." The employer indicated it had paid the claimant \$2,056.26 on May 9, 2014 "for the period ending 5/3/14." The employer indicated it had paid the claimant \$2,056.26 on May 23, 2014 "for the period ending 5/17/14." The employer indicated it had paid the claimant \$2,056.25 on June 6, 2014 "for the period ending May 31, 2014." In the remarks section of the notice of claim, the employer indicated it had paid "Two weeks of pay in lieu of notice - \$2056.26" and "Five weeks of Severance pay - \$5,140.63."

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.5-5 provides:

An individual shall be disqualified for benefits:

5. Other compensation. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

a. Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

b. Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

c. A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this paragraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", "b", or "c", were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service, by the beneficiary, with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual, otherwise qualified, from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

Iowa Admin. Code r. 871-23.3(1) provides:

(1) "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. Wages also means wages in lieu of notice, separation allowance, severance pay, or dismissal pay. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rule 23.2(96).

Iowa Admin. Code r. 871-24.13(3)c provides:

(3) Fully deductible payments from benefits. The following payments are considered as wages; however, such payments are fully deductible from benefits on a dollar-for-dollar basis:

c. Wages in lieu of notice, separation allowance, severance pay and dismissal pay.

Workforce Development Rule 871 IAC 24.13(1) provides as follows:

*Procedures for deducting payments from benefits.* Any payment defined under subrules 24.13(2) and 24.13 (3) made to an individual claiming benefits shall be deducted from benefits in accordance with the following procedures until the amount is exhausted; however, vacation pay which is deductible in the manner prescribed in rule 24.16(96) shall be deducted first when paid in conjunction with other deductible payments described in this rule unless otherwise designated by the employer: The individual claiming benefits is required to designate the last day paid which may indicate payments made under this rule. The employer is required to designate on the Form 65-5317, Notice of Claim, the amount of the payment and the period to which the amount applies. If the individual or the employer does not designate the period to which the amount of the payment applies, and the unemployment insurance representative cannot otherwise determine the period, the unemployment insurance representative shall determine the week or weeks following the effective date of the claim to which the amount of the payment applies by dividing the amount of the payment by the individual's average weekly wage during the highest earnings quarter of the individual's base period. The amount of any payment under subrule 24.13 (2) shall be deducted from the individual's weekly benefit amount on the basis of the formula used to compute an individual's weekly benefit payment as provided in rule 24.18 (96). The amount of any payment under subrule 24.13 (3) shall be fully deducted from the individual's weekly benefit amount on a dollar-for-dollar basis.

The Unemployment Insurance Appeals Section of Iowa Workforce Development has historically interpreted "severance pay" to include a voluntary benefit used to attract employees or "conscience money" to help a former employee survive a lay off. The Appeals Section has historically excluded from the definition of "severance pay" circumstances involving quid pro quo settlements designed to head off further legal action by an employee that might arise from the circumstances surrounding the separation from the employment. The evidence in the record indicates that the "severance pay" the employer paid to Mr. Rumler in connection with his separation from the employment arose out an attempt by the employer to resolve legal matters, or potential legal matters, between itself and Mr. Rumler. Under the Agency's historic interpretation of "severance pay," the \$5,140.63 amount issued to Mr. Rumler falls outside the Agency's definition of wages in lieu of notice, separation allowance, severance pay or dismissal pay, and would not be deductible from his Unemployment Insurance Benefits under Iowa Code Section 96.5(5).

What Mr. Rumler refers to as PTO, the employer elected to call wages in lieu of notice when reporting the sum to Workforce Development. Mr. Rumler did not have to enter into any agreement or waive any rights to receive that two week \$2,056.26 sum. The employer designated the week ending April 19, 2014 as the first week to which a portion, \$1,028.13, of that amount was to be applied. The employer provided sufficient information to indicate the week ending April 26, 2014 as the second week to which the other portion, \$1,028.13, was to be applied. Because the amounts apportioned to those two weeks exceeded Mr. Rumler's \$408.00 weekly benefit amount, Mr. Rumler would not be eligible for benefits for the two week period ending April 26, 2014. Mr. Rumler would otherwise remain eligible for benefits, provided he is otherwise eligible.

**DECISION:**

The Claims Deputy's September 30, 2014, reference 03, decision is modified as follows. The claimant is not eligible for benefits for the two week period ending April 26, 2014 because he received pay in lieu of notice that exceeded his weekly benefit amount. The additional severance pay amount, \$5,140.63, was paid as legal settlement and is not deductible from the claim. The claimant is eligible for benefits for the five week period of April 27, 2014 through May 31, 2014, provided he meets all other eligibility requirements.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/can